

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

## **GOVERNMENT'S RESPONSE TO DEFENDANT JOHN EDWARDS' MOTION FOR PROCEDURES IN JURY SELECTION**

The United States of America, by and through the undersigned attorneys,  
respectfully files its position on the jury selection procedures requested by defendant John  
Edwards in his Motion for Procedures in Jury Selection (Dkt. No. 129).

## I. Fresh Venire

The Government joins in Edwards' request for use of a fresh venire.

## **II. Excused Absences to be Granted Only by the Court**

The Government takes no position on Edwards' request on this issue.

### **III. Pre-Voir Dire Written Questionnaire**

The Government joins in Edwards' request for use of a written questionnaire.

#### **IV. Individual/Small Group Follow Up Voir Dire**

The Government agrees that after analyzing the questionnaires, the parties should make an initial effort to agree on prospective jurors who, subject to the Court's approval, should be stricken for cause. The Government also agrees that for follow-up questions on potentially problematic areas, some effort should be made to prevent jurors'

answers from infecting the remainder of the venire, and individual or small group follow-up by the Court is an appropriate procedure for that purpose. As for permitting the attorneys for the parties to participate in voir dire, the Government is satisfied with the procedures established under Local Criminal Rule 24.1(a).

## **V. Alternate Jurors**

The Government joins in Edwards' request that the alternate jurors not be told that they are alternates.

## **VI. Additional and Alternating Peremptory Strikes**

The Government opposes Edwards' request for additional peremptory strikes. The case he cites in support of his request, *United States v. Barnett*, 644 F.3d 192 (4th Cir. 2011), was a capital murder case, for which twenty strikes per side are prescribed *by rule*. See Fed. R. Crim. P. 24(b)(1). There is no reason to deviate in this case from the standard number of strikes in non-capital felony cases. The Government takes no position on Edwards' request that the Court use alternating strikes as opposed to simultaneous strikes.

Dated: December 22, 2011

Respectfully submitted,

JOHN STUART BRUCE  
Attorney for the United States  
Acting under authority  
conferred by 28 U.S.C. § 515

By: /s/ Robert J. Higdon, Jr.

Robert J. Higdon, Jr.  
Brian S. Meyers  
Special Attorneys  
U.S. Attorney's Office  
310 New Bern Ave., Suite 800  
Raleigh, NC 27601-1461  
Tel: (919) 856-4103  
Fax: (919) 856-4887  
[bobby.higdon@usdoj.gov](mailto:bobby.higdon@usdoj.gov)  
State Bar No. 17229

JACK SMITH  
Chief, Public Integrity Section  
Criminal Division  
U.S. Department of Justice

By: /s/ David V. Harbach, II

David V. Harbach, II  
Jeffrey E. Tsai  
Trial Attorneys  
Public Integrity Section  
Criminal Division  
U.S. Department of Justice  
1400 New York Ave., N.W., Ste. 12100  
Washington, DC 20005  
Tel: (202) 514-1412  
Fax: (202) 514-3003  
[david.harbach@usdoj.gov](mailto:david.harbach@usdoj.gov)

**CERTIFICATE OF SERVICE**

This is to certify that on December 22, 2011, I filed the foregoing document on the Court's CM/ECF system, which will transmit a copy to the following counsel of record in this case:

James P. Cooney III  
Womble Carlyle Sandridge & Rice, PLLC  
One Wells Fargo Center  
301 South College Street, Suite 3500  
Charlotte, North Carolina 28202-6037

Abbe David Lowell  
Chadbourne & Parke LLP  
1200 New Hampshire Avenue, N.W.  
Washington, DC 20036

/s/ David V. Harbach, II  
Trial Attorney  
Public Integrity Section  
Criminal Division  
U.S. Department of Justice  
1400 New York Ave., N.W., Ste. 12100  
Washington, DC 20005  
Tel: (202) 514-1412  
Fax: (202) 514-3003  
[david.harbach@usdoj.gov](mailto:david.harbach@usdoj.gov)